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No. 486

In the Supreme Court of the United States

October Term, 1958

CHESAPEAKE BROADCASTING CORPORATION, PETITIONER

v.

WTBO, INC., AND FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL COMMUNICATIONS COMMISSION

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

JOHN A. FITZGERALD,
General Counsel,
Federal Communications Commission, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 485

CROSLEY BROADCASTING CORPORATION, PETITIONER

v.

WIBC, INC., AND FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL COMMUNICATIONS COMMISSION

In this case the court of appeals vacated a Commission order granting, after comparative hearing, a television station license, on the ground that Commissioner Craven, one of the four Commissioners who comprised the majority which voted for the successful applicant, had improperly participated because he had not heard the oral argument. The court ruled that "When a quorum is present, the Federal Communications Commission may act, but only on the vote of a majority of those present" (Pet. App. 5a); and that objection to Commissioner Craven's participation had not been clearly waived.

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It has been the Commission's consistent view that a majority of its participating members rather than, as petitioner contends (Pet. 11–17), a mere plurality is required for a decision awarding a television license. The Commission believes that the decision of the court below on this question, although it may in its practical application give rise to administrative problems, is in accord with settled law and general practice. Although the Commission contended in the court below that there had been an effective waiver by the parties of their right under Section 409 (b) of the Communications Act to have a Commissioner participating in the final decision actually present at the oral argument, it does not believe that, in the light of the facts of this case, the contrary ruling presents a question of general importance.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

JOHN L. FITZGERALD,
General Counsel,
Federal Communications Commission.

DECEMBER 1958.

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